

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF BOWMAN AND LAUROS REYES
aka LARRY REYES, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

UBS FINANCIAL SERVICES, INC., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. C-04-03525 MMC

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' AND DEFENDANT'S
MOTIONS FOR FINAL APPROVAL OF
SETTLEMENT AND AWARDED
ATTORNEY'S FEES, LITIGATION
EXPENSES, AND ENHANCEMENT
PAYMENTS**

Date: November 17, 2006
Time: 9:00 a.m.
Ctvm: 7
Judge: Maxine M. Chesney

On November 17, 2006 at 9:00 a.m., the Court heard the following motions in the above-captioned matter (the "Lawsuit"): (1) the motion by plaintiffs Jeff Bowman and Lauros Reyes ("Plaintiffs") for final approval of the proposed class action settlement; (2) the motion by defendant UBS Financial Services, Inc. ("Defendant") for final approval of the proposed class action settlement; and (3) the motion by Plaintiffs and Class Counsel for an award of attorney's fees, litigation expenses, and enhancement payments to the two Plaintiffs. After reviewing the parties' written submissions, and after hearing arguments of counsel, the Court finds and orders as follows:

1. All terms used in this order ("Final Order") shall have the same meaning as defined in the parties' "Joint Stipulation of Settlement And Release Between Plaintiffs Jeff Bowman and Lauros Reyes and Defendant UBS Financial Services Inc." ("Joint Stipulation"), a copy of which is attached hereto as **Exhibit A**.

2. This Court has jurisdiction over the subject matter of the Lawsuit and over all parties, including all Class Members.

3. Pursuant to the Court's "Order Granting Preliminary Approval Of Settlement And Setting Final Approval Hearing," dated July 6, 2006 ("Preliminary Order"), the Court preliminarily certified the following class for settlement purposes (the "Class"):

ALL CURRENT AND FORMER EMPLOYEES OF UBS FINANCIAL SERVICES INC., ("UBS") WHO WERE EMPLOYED BY UBS IN THE STATE OF CALIFORNIA AS FINANCIAL ADVISORS (JOB CODES 456 AND 008456) AND/OR NEW FINANCIAL ADVISORS OR FINANCIAL ADVISOR TRAINEES (JOB CODES 226, 008226, 457 AND 008457) DURING ALL OR PART OF THE PERIOD FROM JUNE 30, 2000 THROUGH JUNE 30, 2006.

The Class is now finally and conclusively certified for settlement purposes.

4. In accordance with the Preliminary Order, the parties caused to be mailed the following: (1) Notice of Pendency Of Class Action, Proposed Settlement, And Hearing Date For Court Approval; (2) Claim Form; and (3) Exclusion Form (collectively the "Notice Materials"). The Notice Materials were sent via first class mail within the time mandated in the Preliminary Order, and adequately informed the Class of: (1) the pendency of the proposed Joint Stipulation;

1 (2) all material elements of the proposed Joint Stipulation; (3) the November 17, 2006 hearing
2 date for final approval of the Joint Stipulation; and (4) the opportunity to be excluded from the
3 proposed Class or otherwise object to the proposed Joint Stipulation. David C. Holland of Rust
4 Consulting, Inc., the Settlement Administrator, filed a declaration with the Court on October 20,
5 2006 concerning the dissemination of the Notice Materials and the status of claims and
6 objections.

7 5. The Notice Materials provided due and adequate notice to Class Members and
8 constitute the best notice practicable and possible under the circumstances. The proof of
9 dissemination filed with the Court demonstrates that this Court's orders have been complied with
10 in regard to the Notice Materials and preliminary approval of the Joint Stipulation, and further,
11 that the best notice practicable and possible under the circumstances was in fact given and
12 constituted valid, due, and sufficient notice to members of the Class, complying fully with all
13 applicable statutes and laws.

14 6. No Class Member has filed an objection to this Joint Stipulation. One individual
15 who is not a Class Member, Lawrence R. Kaufmann, filed an objection to the Joint Stipulation
16 and attempted to intervene in the Lawsuit through his attorney Lovell Stewart Halebian, LLP. By
17 Orders dated November 16, 2006, the Court deemed the objection and motion to intervene
18 withdrawn and the Court denied the motion of Anthony Daria to substitute for Lawrence R.
19 Kaufmann in either the objection or the motion to intervene.

20 7. The Court finds that the Joint Stipulation was the product of protracted, arms-
21 length negotiations between experienced counsel, assisted by a respected mediator. The Court
22 finds that the Joint Stipulation is fair, reasonable, adequate, and in the best interests of the Class
23 and hereby grants final approval to the Joint Stipulation. In so doing, the Court has thoroughly
24 considered such factors as: the strength of the Plaintiffs' case; the risk, expense, complexity, and
25 likely duration of further litigation; the risk of maintaining class action status throughout the trial;
26 the amount offered in settlement; the extent of discovery completed and the stage of the
27 proceedings; the experience and views of counsel; and the reaction of the Class Members to the
28

1 proposed Joint Stipulation. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).
2 Plaintiffs and Defendant are ordered to carry out the terms of the Joint Stipulation.

3 8. The Settlement Administrator received 23 timely exclusion forms. A list of the
4 individuals who have timely excluded themselves from the Joint Stipulation is attached hereto as
5 **Exhibit B**. These individuals are not Class Members and are not bound by any of the provisions
6 of the Joint Stipulation.

7 9. Defendant shall pay the claims presented by the claim procedure described in the
8 Joint Stipulation. Defendant shall have no further liability for costs, expenses, interest, attorneys'
9 fees, or for any other charge, expense, or liability, except as provided in the Joint Stipulation.

10 10. The Class is bound by the release and waiver listed in Paragraphs 45 and 47 of the
11 Joint Stipulation, respectively, and this Final Order, which Final Order shall have the force and
12 effect of *res judicata* as to them.

13 11. The class representatives, Jeff Bowman and Lauros Reyes, are bound by the
14 release and waiver listed in Paragraphs 46 and 47 of the Joint Stipulation, respectively, and this
15 Final Order, which Final Order shall have the force and effect of *res judicata* as to them.

16 12. The Joint Stipulation is not an admission by UBS nor is this Final Order a finding
17 of the validity of any claims in the Lawsuit or any wrongdoing by UBS. In addition, the Joint
18 Stipulation is not an admission nor is this Final Order a finding that the certification of the Class
19 is proper for any purpose or proceeding other than for settlement purposes in the present case.
20 Furthermore, neither the Joint Stipulation, nor any document, statement, proceeding or conduct
21 related to the settlement or the Joint Stipulation, nor any reports or accounting of those matters,
22 will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence
23 for any purpose adverse to UBS, including, but not limited to, evidence of a presumption,
24 concession, indication or admission by UBS of any liability, fault, wrongdoing, omission,
25 concession or damage; or (ii) disclosed, referred to or offered in evidence against UBS, in any
26 further proceeding in the Lawsuit, or any other civil, criminal or administrative action or
27 proceeding except for purposes of effectuating the Joint Stipulation. However, the Joint
28 Stipulation may be admitted in evidence and otherwise used in any and all proceedings to enforce

1 any or all terms of the Joint Stipulation, or in defense of any claims released or barred by the Joint
2 Stipulation.

3 13. Concurrently with their motion for final approval of the Joint Stipulation, Plaintiffs
4 and Class Counsel filed a motion for an award of attorney's fees in the amount of \$11,000,000.00
5 (representing 25% of the total settlement amount), litigation expenses of \$33,538.56, and
6 enhancement payments to the class representatives, Jeff Bowman and Lauros Reyes, in the
7 amount of \$20,000.00 each. Those motions are granted. The Court finds that Class Counsel have
8 skillfully advanced novel and untested legal theories on a contingent-fee basis over more than two
9 years, and their efforts resulted in a substantial payment to the Class. The Court finds no
10 "unusual circumstances" to warrant a departure from the Ninth Circuit's 25% benchmark fee.
11 The Court further finds that Class Counsel's expenses were reasonably incurred in prosecuting
12 this case. Finally, the Court finds that the proposed enhancement payments to Jeff Bowman and
13 Lauros Reyes are reasonable in light of the services they performed on behalf of the Class and the
14 risks they undertook in bringing the Lawsuit. The Court further notes that no Class Member has
15 objected to the proposed award of attorney's fees, litigation expenses, and enhancement
16 payments. Accordingly, the Court grants Plaintiffs' and Class Counsel's motion in its entirety.

17 14. The claims alleged in the Complaint are hereby dismissed with prejudice,
18 provided, however, and without affecting the finality of this Final Order in any way, this Court
19 retains continuing jurisdiction over the interpretation, implementation, administration and
20 enforcement of the terms of the Joint Stipulation.

21 IT IS SO ORDERED:

22
23 DATED: November 22, 2006



HONORABLE MAXINE M. CHESNEY
UNITED STATES DISTRICT JUDGE

24
25
26 LEGAL_US_W # 54578389.5
27
28

EXHIBIT A

M. KIRBY C. WILCOX (SB# 78576) kirbywilcox@paulhastings.com
PAUL, HASTINGS, JANOFISKY & WALKER LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105-3441
Telephone: (415) 856-7000
Facsimile: (415) 856-7100

Attorneys for Defendant
UBS FINANCIAL SERVICES INC.

JAMES F. CLAPP (SB# 145814)
DOSTART CLAPP GORDON & COVENEY LLP
4370 La Jolla Village Drive, Suite 970
San Diego, CA 92122
Telephone: (858) 623-4200
Facsimile: (858) 623-4299

H. TIM HOFFMAN (SB# 49141)
ARTHUR W. LAZEAR (SB# 83603)
HOFFMAN & LAZEAR
180 Grand Avenue, Suite 1550
Oakland, CA 94612
Telephone: (510) 763-5700
Facsimile: (510) 835-1311

MARK R. THIERMAN (SB# 72913)
THIERMAN LAW FIRM P.C.
7287 Lakeside Drive
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF BOWMAN AND LAUROS REYES
aka LARRY REYES, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UBS FINANCIAL SERVICES INC., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. C-04-03525 MMC

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE BETWEEN PLAINTIFFS
AND JEFF BOWMAN AND LAUROS
REYES AND DEFENDANT UBS
FINANCIAL SERVICES INC.**

Plaintiffs Jeff Bowman and Lauros Reyes aka Larry Reyes, individually and on
behalf of all others similarly situated, and defendant UBS Financial Services Inc., by and through

1 their respective counsel of record, agree to resolve the above-captioned case through this Joint
2 Stipulation of Settlement and Release.

3
4 **I.**
DEFINITIONS

5
6 1. "Action" means the consolidated civil action filed on May 11, 2005 in the
7 United States District Court for the Northern District of California entitled *Jeff Bowman and*
8 *Lauros Reyes aka Larry Reyes, individually, and on behalf of all others similarly situated v. UBS*
9 *Financial Services Inc.*, Case No. C-04-03525 MMC.

10
11 2. "UBS" shall mean Defendant UBS Financial Services Inc. and all of its
12 officers, directors, agents, attorneys, parents, predecessors, successors, subsidiaries, and related
13 and affiliated entities.

14
15 3. "Claims Administrator" shall mean Rust Consulting, or an administrator
16 mutually agreed to by the Parties that will perform the duties of (i) using the data provided by
17 UBS to prepare the Claim Forms with the number of Months Worked in the Covered Positions by
18 each Class Member; (ii) mailing the Notice, Claim Forms and Exclusion Forms to Class
19 Members; (iii) tracking returned Claim and Exclusion Forms; (iv) notifying the Parties of timely
20 and untimely claims; (v) calculating the amounts due to each Class Member pursuant to the
21 Settlement; and (vi) notifying the Parties of and resolving any disputes regarding claims by the
22 Class Members.

23
24 4. "Claim Form" shall mean Exhibit "B", the form approved by the Parties
25 and subject to Court approval which each Class Member must submit to recover a portion of the
26 settlement proceeds.
27
28

1 5. “Class” or “Class Members” shall mean the named Plaintiffs, Jeff Bowman
2 and Lauros Reyes, and all persons who work or worked for UBS in the State of California in the
3 Covered Positions during the Covered Period.

4
5 6. “Class Representatives” shall mean Plaintiff Jeff Bowman and Lauros
6 Reyes.

7
8 7. “Class Counsel” shall mean James F. Clapp of Dostart Clapp Gordon &
9 Coveney, LLP, Mark Thierman of Thierman Law Firm P.C., Steven L. Miller, Eric Kingsley of
10 Kingsley & Kingsely, APC, and H. Tim Hoffman and Arthur W. Lazear of Hoffman & Lazear.

11
12 8. “Class Members’ Released Period” shall mean the period June 30, 2000 to
13 the date on which the District Court gives final approval of the Settlement.

14
15 9. “Class Representatives’ Released Period” shall mean the period from the
16 start of time to the date on which the District Court gives final approval of the Settlement.

17
18 10. “Compensable Work Months” shall mean all months worked by UBS’s
19 employees in California in the Covered Positions during the Covered Period.

20
21 11. “Court” refers to the United States District Court of the Northern District
22 of California.

23
24 12. “Covered Period” shall mean the period June 30, 2000 through the date on
25 which the District Court gives preliminary approval of the Settlement.

1 13. “Covered Positions” refers to job code 226, Unregistered Trainee; job code
2 456, Broker; and job code 457, Registered Trainee at UBS Financial Services Inc. and UBS
3 International, Inc.

4
5 14. “Exclusion Form” refers to Exhibit “C”, the Request for Exclusion Form
6 approved by the Parties and subject to Court approval which a Class Member must submit to
7 exclude himself or herself from the release of claims pursuant to this Settlement.

8
9 15. “Final Judgment” shall mean the Order Granting Final Approval of Class
10 Action Settlement and Judgment entered by the Court.

11
12 16. “Maximum Payment” shall mean up to \$44,000,000.00 to be paid by UBS
13 pursuant to this Settlement.

14
15 17. “Notice” shall mean the Notice of Pendency of Class Action, Proposed
16 Settlement and Hearing Date for Court Approval attached as Exhibit “A.” It is the notice
17 approved by the Parties and subject to Court approval which the Claims Administrator will mail
18 to each Class Member explaining the terms of the Settlement and the claims process.

19
20 18. “Parties” shall mean the Class Representatives, Class Members and UBS.

21
22 19. “Settlement” shall mean this Joint Stipulation of Settlement and Release.

23
24 20. “Settlement Effective Date” shall mean the first day following the last of
25 the following occurrences:

1 (a) The date the time to appeal or seek permission to appeal or seek
2 other judicial review of the entry of a Final Judgment approving the Settlement has expired with
3 no appeal or other judicial review having been taken or sought; or
4

5 (b) If an appeal or other judicial review has been taken or sought, the
6 date the Final Judgment is finally affirmed by an appellate court with no possibility of subsequent
7 appeal or other judicial review therefrom, or the date the appeal(s) or other judicial review
8 therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review.
9

10 **II.** **RECITALS**

11 21. On June 30, 2004, plaintiff Jeff Bowman commenced a purported class
12 action against UBS in Alameda County Superior Court ("Bowman action"). On October 13,
13 2004 plaintiff Lauros Reyes commenced a purported class action against UBS in Los Angeles
14 County Superior Court ("Reyes action"). On August 23, 2004 UBS filed its answer to the
15 Bowman action, and on January 3, 2005 UBS filed its answer to the Reyes action. On August 23,
16 2004 UBS removed the Bowman action to the United States District Court for the Northern
17 District of California. By stipulation, Reyes dismissed his state court action and on May 11,
18 2005, Bowman filed an amended complaint in federal district court that expanded upon his earlier
19 claims and included Reyes as a named party. In the joint action, plaintiffs alleged that they and
20 the Class were misclassified as exempt from federal and state overtime law and not paid
21 compensation for overtime hours they worked, including interest and penalties. They also alleged
22 that they incurred business-related expenses, that UBS did not reimburse them for those expenses
23 and that UBS unlawfully made adjustments to and/or took deductions from their compensation.
24 They further alleged that they and the Class were not provided with state-mandated meal periods.
25

26 22. Plaintiffs believe this Action is meritorious based on alleged violations of
27 California's wage and hour laws and the FLSA, and that their Action is appropriate for class
28

1 action treatment. UBS denies any liability or wrongdoing of any kind associated with the claims
2 alleged, and contends that, for any purpose other than settlement, this Action is not appropriate
3 for class or collective action treatment pursuant to Federal Rule of Civil Procedure 23 or 29
4 U.S.C. § 216(b) respectively. UBS further contends that it has complied with the California
5 Labor Code, the Fair Labor Standards Act, the California Business and Professions Code, and the
6 applicable Industrial Welfare Commission Wage Orders.

7
8 23. On July 11, 2005 the Parties participated in a full-day private mediation
9 with Edward A. Panelli, Esq. and failed to reach an agreement to settle this Action. On
10 September 28, 2005, the Parties engaged in full-day settlement negotiations and reached an
11 agreement to settle this Action on the terms set forth below.

12
13 24. The Parties agree that the Court shall certify a class solely for the purpose
14 of implementing the terms of this Settlement.

15
16 25. Class Counsel represents that they have conducted a thorough investigation
17 into the facts of this case, and have diligently pursued an investigation of the Class Members'
18 claims against UBS, including (i) interviewing Class Members and analyzing the results of Class
19 Member interviews; (ii) reviewing relevant documents; (iii) researching the applicable law and
20 the potential defenses. Based on their own independent investigation and evaluation, Class
21 Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
22 interest of the Class Members in light of all known facts and circumstances, including the risk of
23 significant delay, and defenses asserted by UBS. UBS agrees that the Settlement is fair,
24 reasonable and adequate.

25
26 26. The entry of Final Judgment in this Action shall dismiss with prejudice all
27 claims which were or which could have been alleged in Plaintiffs' complaint. The Parties agree
28

1 to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval
2 of this Settlement, to effectuate its terms, and to dismiss this Action with prejudice.

3
4 **III.**
TERMS OF SETTLEMENT

5 27. Maximum Payment:

6
7 (a) The Maximum Payment under the Settlement, if all Class Members
8 file valid and timely claims, is \$44,000,000.00, consisting of the following: (1) \$44,000,000.00
9 less the sums set forth at (2) through (4) of this Subparagraph to pay the timely and valid claims
10 of the Class Members; (2) up to \$11,000,000.00 in attorney's fees to Class Counsel, plus up to
11 \$100,000.00 in litigation costs, subject to Court approval; (3) up to \$40,000 (\$20,000 each) in
12 enhancements to the Class Representatives, subject to Court approval; and (4) a reasonable
13 amount to the Claims Administrator to administer the Settlement.
14

15 (b) With respect to the portion of the Maximum Payment allocated to
16 pay the timely and valid claims of the Class Members, the Parties will develop a formula that
17 results in the complete distribution of that portion, assuming that all Class Members participate in
18 the distribution. If fewer than all Class Members participate in the distribution, the residual shall
19 be the exclusive property of UBS.
20

21 (c) UBS has represented that Class Members who participate in the
22 Settlement by submitting a Claim Form will receive a payment proportionate to the number of
23 months or partial months that they worked in a Covered Position between June 30, 2000 and the
24 date of preliminary approval ("Represented Compensable Work Months").
25

26 28. Attorneys' Fees: UBS agrees, subject to the approval of the Court, to pay
27 to Class Counsel twenty-five percent (25%) of the Maximum Payment (or \$11,000,000.00) in
28

1 attorneys' fees to compensate Class Counsel for all of the work already performed in this case
2 and all work remaining to be performed in documenting the Settlement, securing Court approval
3 of the Settlement, administering the Settlement, ensuring that the Settlement is fairly
4 administered and implemented and obtaining dismissal of the Action. If the Court awards Class
5 Counsel less than twenty-five percent (25%) of the Maximum Payment, the residual shall be the
6 exclusive property of UBS.

7
8 29. Costs: Subject to Court approval, UBS further agrees to pay Class Counsel
9 a maximum amount of \$100,00.00 for costs and expenses incurred by Class Counsel in
10 prosecuting the Action and in implementing the terms of this Settlement. If the Court awards
11 Class Counsel less than \$100,000.00 in costs and expenses, the residual shall be the exclusive
12 property of UBS. UBS will issue Class Counsel an IRS Form 1099 for their attorneys' fees and
13 costs.

14
15 30. Enhancement to Class Representatives: Conditioned upon the Class
16 Representatives' execution of a general release in favor of UBS, UBS agrees to pay to each of the
17 Class Representatives, Jeff Bowman and Lauros Reyes, a service payment of \$20,000 each as an
18 enhancement for their service as Class Representatives, in addition to any payment they each may
19 otherwise receive as a Class Member. If the Court awards the Class Representatives less than
20 \$20,000 each, the residual shall be the exclusive property of UBS. UBS will issue an IRS Form
21 1099 for these service payments.

22
23 31. Distribution to Class Members:

24
25 (a) UBS agrees to pay only those Class Members who submit timely
26 and valid Claim Forms. To be timely, the Claim Forms must be postmarked by the date indicated
27 on the Claim Form. To be valid, Claim Forms must be completed in full, signed under penalty of
28

1 perjury, and accompanied by a photocopy of the driver's license of the claimant or other form of
2 government issued picture identification (*e.g.*, passport).

3
4 (b) After deductions of Court approved attorneys' fees, litigation costs,
5 the service payments to the Class Representatives, and a reasonable payment for the services of
6 the Claims Administrator, the remainder of the Maximum Payment shall be available to be
7 distributed to the Class Members (such amount, the "Class Member Distribution Amount").

8
9 (c) Class Member Distribution Amount: The gross amount distributed
10 to each Class Member will be based on a formula the Parties develop for allocating the portion of
11 the Maximum Payment that they designate for payments to Class Members.

12
13 (d) Tax Allocation: The Parties agree that the settlement payments to
14 Class Members are fifty -percent (50%) wages subject to the withholding of all applicable local,
15 state and federal taxes, and fifty-percent (50%) penalties and interest. UBS will pay its portion of
16 payroll taxes and withholdings.

17
18 (e) Settlement Payment Date: UBS shall mail the settlement payments
19 to the Class Members as well as the enhancement to the Class Representative within twenty (20)
20 calendar days following the Settlement Effective Date. UBS shall mail the payment for
21 attorneys' fees and costs within five (5) calendar days following the Settlement Effective Date.

22
23 IV.
24 NOTICE TO THE PLAINTIFF CLASS

25 32. A Notice in the form attached as Exhibit "A" and approved by the Court
26 shall be sent by the Claims Administrator to the Class Members, by first class mail, within thirty
27 (30) days of the Court's entry of the Order Granting Preliminary Approval of the Settlement and
28

1 Notice. Attached to the Notice will be a Claim Form and a Request for Exclusion Form, in the
2 form attached as Exhibits "B" and "C."

3
4 33. UBS shall provide, within two weeks following the Court's entry of the
5 Order Granting Preliminary Approval of the Settlement and Notice, to the Claims Administrator a
6 database of all putative Class Members, including last known addresses and telephone numbers,
7 dates of employment in the Covered Positions for the Covered Period, and social security
8 numbers. This database shall be based on UBS's payroll and other business records and in a
9 format acceptable to the Claims Administrator. UBS agrees to consult with the Claims
10 Administrator prior to the production date to ensure that the format of the database will be
11 acceptable to the Claims Administrator. In consideration of the privacy concerns of the
12 individual Class Members, the Claims Administrator will not share the identity of individual
13 Class Members with the Class Representatives or Class Counsel. If, however, a Class Member
14 requests the opportunity to communicate with Class Counsel, the Claims Administrator shall
15 contact Class Counsel and furnish them with that Class Member's contact information.
16 Notwithstanding the foregoing, the Claims Administrator will provide to Class Counsel the name,
17 last-known address, last-known telephone number, and dates of employment in each Covered
18 Position during the Covered Period of any Class Member who (1) objects to the Settlement, (2)
19 requests exclusion from the Settlement, or (3) otherwise expresses any opposition to the
20 Settlement.

21
22 34. The Claims Administrator will use all standard skip tracing devices to
23 obtain forwarding addresses and forward return mail to ensure that the Notice, the Claim Form
24 and instructions, and the Exclusion Form are sent to all Class Members. It will be conclusively
25 presumed that if an envelope so mailed has not been returned within thirty (30) days of the
26 mailing that the Class Member received the Notice. With respect to returned envelopes, the
27 Claims Administrator will use reasonable diligence to obtain a current address and re-mail the
28 envelope to such address within ten (10) days of the receipt of the returned envelope.

1 on the Claim Form and UBS's records. The Claims Administrator shall be granted reasonable
2 access to UBS's records in order to perform its duties. In the event of any dispute over a Class
3 Member's dates of employment in a Covered Position, the parties will meet and confer in good
4 faith in an effort to resolve the dispute, and if the parties are unable to reach an agreement, the
5 Claims Administrator shall decide the dispute, and its decision will be final.

6
7 42. The Claims Administrator will submit a list of timely, non-fraudulent
8 claims and the calculation of the amounts due to each Class Member pursuant to this Settlement.

9
10 43. The Claims Administrator will timely notify claimants whose claims are
11 untimely or denied for other reasons, *e.g.*, the claimant is not a member of the Class because the
12 claimant did not hold one of the Covered Positions during the Covered Period.

13
14 44. UBS shall be responsible for issuing the payments and calculating and
15 withholding all required state and federal taxes. UBS will file proof of payment with the Court
16 and will serve Class Counsel with a copy.

17
18 **VI.**
RELEASE OF CLAIMS

19 45. Released Claims by Class Members. The Class Members (other than those
20 who file Exclusion Forms) hereby fully and finally release and discharge UBS and its former and
21 present parent, subsidiary, and affiliated corporations and its officers, directors, employees,
22 partners, shareholders and agents, and any other successors, assigns, or legal representatives
23 ("Class Members' Released Parties"), from any and all wage-and-hour claims, rights, demands,
24 liabilities and cause of action of every nature and description, whether known or unknown,
25 arising during the period from June 30, 2000 to the date on which the District Court gives final
26 approval of the Settlement ("Class Members' Released Period"), including without limitation
27 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs,
28

1 penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs,
2 restitution, or equitable relief, based on the following categories of allegations: (a) any and all
3 claims for the failure to pay any type of overtime wages; any and all claims for the failure to
4 provide meal and/or rest periods; and/or any and all claims stemming from or based on the
5 alleged misclassification of employees as exempt employees, *i.e.*, employees who are exempt
6 under federal and/or California law from the wage and hour requirements imposed on employees
7 who do not qualify for any exemption, including without limitation the executive, administrative,
8 or professional exemptions set forth in state and federal law; (b) any and all claims alleging the
9 improper assessment of costs, fines, penalties, chargebacks or settlements on employees,
10 including without limitation claims for improper trading error deductions; and (c) any and all
11 claims for failure to reimburse, indemnify or cover or pay for business costs, including without
12 limitation claims for reimbursement of costs spent on or imposed for any type of business
13 expense or support staff (Class Members' Released Claims). The Class Members' Released
14 Claims include claims meeting the above definition under any and all applicable statutes,
15 including without limitation the federal Fair Labor Standards Act, the Portal to Portal Act,
16 California Labor Code 96 through 98.2 et seq., the California Payment of Wages Law, and in
17 particular, California Labor Code § 200 et seq., including California Labor Code §§ 200 through
18 243 and §§ 203 and 218 and 218.5 in particular, California Labor Code § 300 et seq.; California
19 Labor Code § 400 et seq.; California Working Hours Law, California Labor Code § 500 et seq.,
20 California Labor Code § 1194; California Labor Code §§ 2802 and 2804; the California Unfair
21 Competition Act, and in particular, California Bus. & Prof Code § 17200 et seq., the California
22 Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698
23 through 2699, California Code of Civil Procedure § 1021.5, any other provision of the California
24 Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of
25 their iterations (including without limitation Wage Order 4 and the wage, overtime, meal and rest
26 period, record-keeping, and deduction provisions thereof).

27
28 The parties acknowledge that, during the Class Members' Released Period, certain

1 Class Members may have entered into agreements to repay losses due to trading errors and/or
2 omissions ("Repayment Agreements"). Except for those Class Members who file Exclusion
3 Forms, UBS hereby releases and discharges the Class Members, and each of their heirs,
4 representatives, successors, and assigns, from any and all claims, suits, debts, or demands based
5 upon or arising from such Repayment Agreements. Furthermore, UBS agrees that, upon entry of
6 the order granting preliminary approval, UBS will refrain from collecting on any such Repayment
7 Agreements unless and until the Settlement is either disapproved by the Court or revoked
8 pursuant to Paragraph 68 below.

9
10 46. Released Claims by the Class Representatives. The Class Representatives
11 hereby fully and finally release and discharge UBS and its former and present parent, subsidiary,
12 and affiliated corporations and its officers, directors, employees, partners, shareholders and
13 agents, and any other successors, assigns, or legal representatives ("Class Representatives'
14 Released Parties"), from any and all claims, whether known or unknown, arising during the
15 period from the start of time to the date on which the District Court gives final approval of the
16 Settlement ("Class Representatives' Released Period"), whether under federal, state and/or local
17 law, statute, ordinance, regulation, common law, or other source of law; whether or not such
18 claims are in the nature of claims for damages, unpaid wages, premium pay, deductions,
19 unreimbursed business expenses, waiting-time penalties, or other penalties for overtime, missed
20 meal periods, missed rest breaks, and other alleged wage-and-hour violations, attorneys' fees or
21 injunctive relief; and whether sounding in contract or tort ("Class Representatives' Released
22 Claims"). The Class Representatives' Released Claims include, but are not limited to, claims
23 arising from or dependent on the California Labor Code; the wage orders of the California
24 Industrial Welfare Commission; California Business and Professions Code section 17200 *et seq.*;
25 the California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.*; the California
26 common law of contract and tort; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et*
27 *seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement
28

1 Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and the Fair Labor Standards Act, 29
2 U.S.C. § 201 *et seq.*

3
4 Class Members' Released Claims and Class Representatives' Released Claims
5 shall be referred to as Released Claims.

6
7 47. Waiver of California Civil Code Section 1542. It is the desire of the
8 Parties to fully, finally, and forever settle, compromise, and discharge all Class Members'
9 Released Claims which were or which could have been asserted in this Action against UBS,
10 whether known or unknown, liquidated or unliquidated. Each Class Member and Class
11 Representative waives, as to their Released Claims, all rights and benefits afforded by Section
12 1542 of the Civil Code of the State of California ("Section 1542"), and does so understanding the
13 significance of that waiver. Section 1542 provides: "A general release does not extend to claims
14 which the creditor does not know or suspect to exist in his or her favor at the time of executing
15 the release, which if known by him or her must have materially affected his or her settlement with
16 the debtor." As a consequence, the Class Representatives and each Class Member may hereafter
17 discover facts in addition to or different from those which he or she now knows or believes to be
18 true with respect to the subject matter of the Released Claims, but the Class Representatives and
19 each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the
20 Judgment shall have, fully, finally, and forever settled and released any and all Released Claims,
21 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
22 concealed or hidden, which then exist, or heretofore have existed upon any theory of law or
23 equity now existing or coming into existence in the future, including, but not limited to, conduct
24 which is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
25 without regard to the subsequent discovery or existence of such different or additional facts. The
26 Class Representatives acknowledge, and the Class Members shall be deemed by operation of the
27 Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
28 key element of the settlement of which this release is a part.

VII.
DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

48. The Parties shall submit this Settlement to the Court in support of Plaintiffs' Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement, the Parties shall apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement and Notice substantially in the following form:

- (a) Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Class;
- (b) Approving as to form and content the proposed Notice;
- (c) Approving as to form and content the proposed Claim Form and instructions for UBS employees in the Covered Positions;
- (d) Approving as to form and content the proposed Exclusion Form;
- (e) Directing the mailing of the Notice, the Claim Form and the Exclusion Form by first class mail to the Class Members;
- (f) Preliminarily approving the Settlement;
- (g) Preliminarily certifying the Class for purposes of Settlement; and
- (h) Approving Dostart Clapp Gordon & Coveney, LLP, the Thierman Law Firm, PC, Steven L. Miller, Kingsley & Kingsley, APC, and Hoffman & Lazear as Class Counsel, Jeff Bowman and Lauros Reyes as Class Representatives, and Rust Consulting as the Claims Administrator.

VIII.
DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

49. Following final approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment:

- 1 (a) Approving the Settlement, adjudging the terms thereof to be fair,
2 reasonable and adequate, and directing consummation of its terms and provisions;
- 3 (b) Approving Class Counsel's application for an award of attorneys'
4 fees and reimbursement of costs;
- 5 (c) Approving the Class Representatives' service payment;
- 6 (d) Certifying the Class for Settlement purposes;
- 7 (e) Dismissing this Action on the merits and with prejudice and
8 permanently barring all Class Members (other than those who timely filed Exclusion Forms) from
9 prosecuting against the Class Members' Released Parties any and all Class Members' Released
10 Claims arising during the Class Members' Released Period; and
- 11 (f) Permanently barring the Class Representatives from prosecuting
12 against the Class Representative's Released Parties any and all Class Representative's Released
13 Claims arising during the Class Representative's Released Period.

14
15 **IX.**
VOIDING THE AGREEMENT

16 50. If this Settlement is not approved, the Settlement shall not be used nor be
17 admissible in any subsequent proceedings either in this Court or in any other Court or forum. If
18 there is any reduction in the attorneys' fee award, such reduction may be appealed as set forth
19 below but is not a basis for rendering the entire Settlement voidable and unenforceable.
20

21 **X.**
PARTIES' AUTHORITY

22
23 51. The respective signatories to the Settlement represent that they are fully
24 authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.
25
26
27
28

XI.
MUTUAL FULL COOPERATION

52. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of UBS and its counsel, take all necessary steps to secure the Court's Final Judgment.

53. UBS agrees that it will not attempt to discourage Class Members from filing Claim Forms.

XII.
NO PRIOR ASSIGNMENTS

54. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Settlement.

XIII.
NO ADMISSION

55. Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of UBS, and UBS denies liability therefor. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Settlement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

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XIV.
ENFORCEMENT ACTIONS

56. In the event that one or more of the Parties institutes any legal action, arbitration, or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

XV.
NOTICES

57. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

- (a) To the Class:
James F. Clapp, Esq.
Dostart Clapp Gordon & Coveney, LLP
4370 La Jolla Village Drive, Suite 970
San Diego, California 92122
- (b) To UBS:
M. Kirby C. Wilcox, Esq.
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, California 94105

XVI.
CONSTRUCTION

58. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or her or its counsel participated in the drafting of this Settlement.

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XVII.
CAPTIONS AND INTERPRETATIONS

59. Paragraph titles or captions contained in this Settlement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Settlement is contractual and not merely a recital.

XVIII.
MODIFICATION

60. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

XIX.
INTEGRATION CLAUSE

61. This Settlement contains the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged in this Settlement. No rights under this Settlement may be waived except in writing.

XX.
BINDING ON ASSIGNS

62. This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

XXI.
CLASS COUNSEL SIGNATORIES

63. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each Class Member execute this Settlement. The Notice, Exhibit "A", will advise all Class Members of the binding nature of the release. Excepting only

1 the Class Members who timely submit an Exclusion Form, the Notice shall have the same force
2 and effect as if this Settlement were executed by each Class Member.

3
4 **XXII.**
COUNTERPARTS

5 64. This Settlement may be executed in counterparts, and when each party has
6 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
7 and, when taken together with other signed counterparts, shall constitute one Settlement, which
8 shall be binding upon and effective as to all Parties.

9
10 **XXIII.**
RIGHT OF APPEAL

11
12 65. The Parties agree to waive appeals with the sole exception that Plaintiffs
13 can appeal a reduction, if any, in the attorneys' fees amount.

14
15 **XXIV.**
CLASS CERTIFICATION

16 66. The Parties agree that the stipulation of Class Certification is for settlement
17 purposes only and if for any reason the settlement is not approved, the Stipulation will be of no
18 force or effect. The Parties agree that certification for settlement purposes is in no way an
19 admission that class certification is proper and that evidence of this stipulation for settlement
20 purposes only will not be deemed admissible in this or any other proceeding.
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XXV.
NO SETTLEMENT FUND

67. The Parties agree that California Code of Civil Procedure Section 384 is not applicable. The Parties represent that the Maximum Payment is a settlement amount that takes into account the probability that many Class Members for various reasons will not file claims. The Parties recognize that the settlement amount would have been substantially less if all of it had to be paid. No fund has been created. No obligation to pay Class Members is created until a valid Claim Form is filed. There is thus no residue. Neither Plaintiffs nor their counsel shall take, or cause any other person to take, a position before the Court that California Code of Civil Procedure Section 384 applies to this Settlement.

XXVI.
RIGHT OF REVOCATION

68. If more than ten percent (10%) of the Class Members timely submit Exclusion Forms, UBS has the exclusive right to void this Settlement. UBS shall make its election prior to Final Judgment. If the Settlement is not approved or is voided, neither the Class Representatives nor Class Counsel shall be liable for any costs of administration.

DATED: June 13, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: 

M. KIRBY C. WILCOX

Attorneys for Defendant
UBS Financial Services Inc.

DATED: June __, 2006

UBS FINANCIAL SERVICES INC.

By: _____

[UBS REPRESENTATIVE]

Who is authorized to execute on behalf of UBS Financial Services Inc.

Case 3:04-cv-03525-MMC Document 58 Filed 06/21/2006 Page 23 of 50

XXV.**NO SETTLEMENT FUND**

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DATED: June __, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____

M. KIRBY C. WILCOX

Attorneys for Defendant
UBS Financial Services Inc.

DATED: June 20, 2006

UBS FINANCIAL SERVICES INC.

By: Claudia M. Ahern

[UBS REPRESENTATIVE]

Who is authorized to execute on behalf of UBS Financial Services Inc.

Case 3:04-cv-03525-MMC Document 58 Filed 06/21/2006 Page 24 of 50

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DATED: June __, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____

M. KIRBY C. WILCOX

Attorneys for Defendant
UBS Financial Services Inc.DATED: June 20, 2006

UBS FINANCIAL SERVICES INC.

By:  _____

[UBS REPRESENTATIVE]

Who is authorized to execute on behalf of UBS Financial Services Inc.

1 DATED: June ____, 2006

UBS INTERNATIONAL, INC.

2
3 By: SCOTT NOAH
EXECUTIVE DIRECTOR

WEDI Buehl
COO

[UBS REPRESENTATIVE]

4 Who is authorized to execute on behalf of UBS
International, Inc.

5 DATED: June ____, 2006

DOSTART CLAPP GORDON & COVENEY, LLP

6 By: _____

JAMES F. CLAPP

Attorneys for Plaintiffs

9 DATED: June ____, 2006

HOFFMAN & LAZEAR

10 By: _____

ARTHUR W. LAZEAR

Attorneys for Plaintiff

13 DATED: June ____, 2006

THIERMAN LAW FIRM

14 By: _____

MARK R. THIERMAN

Attorneys for Plaintiff

17 DATED: June ____, 2006

REPRESENTATIVE PLAINTIFF

18 By: _____

JEFF BOWMAN

Representative Plaintiff

21 DATED: June ____, 2006

REPRESENTATIVE PLAINTIFF

22 By: _____

LAUROS REYES

Representative Plaintiff

27 LEGAL_US_W 5367(274.5

28 CASE NO. C-04-03525 MMC

-23-

JOINT STIPULATION OF SETTLEMENT
AND RELEASE

Empfangszeit 21. Juni 3:25

1 DATED: June _____, 2006

UBS INTERNATIONAL, INC.

2
3 By: _____

[UBS REPRESENTATIVE]

4 Who is authorized to execute on behalf of UBS
5 International, Inc.

6 DATED: June 21, 2006

DOSTART CLAPP GORDON & COVENEY, LLP

7
8 By:  _____

JAMES F. CLAPP

Attorneys for Plaintiffs

9
10 DATED: June _____, 2006

HOFFMAN & LAZEAR

11
12 By: _____

ARTHUR W. LAZEAR

Attorneys for Plaintiff

13
14 DATED: June _____, 2006

THIERMAN LAW FIRM

15
16 By: _____

MARK R. THIERMAN

Attorneys for Plaintiff

17
18
19 DATED: June 20, 2006

REPRESENTATIVE PLAINTIFF

20
21 By:  _____

JEFF BOWMAN

Representative Plaintiff

22
23 DATED: June _____, 2006

REPRESENTATIVE PLAINTIFF

24
25 By: _____

LAUROS REYES

Representative Plaintiff

26
27 LEGAL_US_W # 53671274.5

28 CASE NO. C-04-03525 MMC

1 DATED: June _____, 2006

UBS INTERNATIONAL, INC.

2
3 By: _____

[UBS REPRESENTATIVE]

4 Who is authorized to execute on behalf of UBS
5 International, Inc.

6 DATED: June _____, 2006

DOSTART CLAPP GORDON & COVENEY, LLP

7
8 By: _____

JAMES F. CLAPP

Attorneys for Plaintiffs

9
10 DATED: June 19, 2006

HOFFMAN & LAZEAR

11
12 By: _____

ARTHUR W. LAZEAR

Attorneys for Plaintiff

13
14 DATED: June _____, 2006

THIERMAN LAW FIRM

15
16 By: _____

MARK R. THIERMAN

Attorneys for Plaintiff

17
18
19 DATED: June _____, 2006

REPRESENTATIVE PLAINTIFF

20
21 By: _____

JEFF BOWMAN

Representative Plaintiff

22
23 DATED: June _____, 2006

REPRESENTATIVE PLAINTIFF

24
25 By: _____

LAUROS REYES

Representative Plaintiff

26
27 LEGAL_US_W # 53671274.5

28

CASE NO. C-04-03525 MMC

-23-

JOINT STIPULATION OF SETTLEMENT
AND RELEASE

1 DATED: June _____, 2006

UBS INTERNATIONAL, INC.

2
3 By: _____

[UBS REPRESENTATIVE]

4 Who is authorized to execute on behalf of UBS
International, Inc.

5 DATED: June _____, 2006

DOSTART CLAPP GORDON & COVENEY, LLP

6
7 By: _____

JAMES F. CLAPP

8 Attorneys for Plaintiffs

9 DATED: June _____, 2006

HOFFMAN & LAZEAR

10
11 By: _____

ARTHUR W. LAZEAR

12 Attorneys for Plaintiff

13 DATED: June 21, 2006

THIERMAN LAW FIRM

14
15 By:  _____

MARK R. THIERMAN

16 Attorneys for Plaintiff

17
18 DATED: June _____, 2006

REPRESENTATIVE PLAINTIFF

19
20 By: _____

JEFF BOWMAN

21 Representative Plaintiff

22 DATED: June _____, 2006

REPRESENTATIVE PLAINTIFF

23
24 By: _____

LAUROS REYES

25 Representative Plaintiff

26
27 LEGAL_US_W # 53671274.5

28 CASE NO. C-04-03525 MMC

-23-

JOINT STIPULATION OF SETTLEMENT
AND RELEASE

1 DATED: June ____, 2006

UBS INTERNATIONAL, INC.

2

3

By: _____

4

[UBS REPRESENTATIVE]

Who is authorized to execute on behalf of UBS
International, Inc.

5

6 DATED: June ____, 2006

DOSTART CLAPP GORDON & COVENEY, LLP

7

8

By: _____

JAMES F. CLAPP

Attorneys for Plaintiffs

9

10 DATED: June ____, 2006

HOFFMAN & LAZEAR

11

12

By: _____

ARTHUR W. LAZEAR

Attorneys for Plaintiff

13

14 DATED: June ____, 2006

THIERMAN LAW FIRM

15

16

By: _____

MARK R. THIERMAN

Attorneys for Plaintiff

17

18

19 DATED: June ____, 2006

REPRESENTATIVE PLAINTIFF

20

21

By: _____

JEFF BOWMAN

Representative Plaintiff

22

23 DATED: June 21, 2006

REPRESENTATIVE PLAINTIFF

24

25

By:  _____

LAUROS REYES

Representative Plaintiff

26

27

LEGAL_US_W# 53671274.5

28

EXHIBIT A

M. KIRBY C. WILCOX (SB# 78576) kirbywilcox@paulhastings.com
PAUL, HASTINGS, JANOFISKY & WALKER LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105-3441
Telephone: (415) 856-7000
Facsimile: (415) 856-7100

Attorneys for Defendant
UBS FINANCIAL SERVICES INC.

JAMES F. CLAPP (SB# 145814)
DOSTART CLAPP GORDON & COVENEY, LLP
4370 La Jolla Village Drive, Suite 970
San Diego, CA 92122
Telephone: (858) 623-4200
Facsimile: (858) 623-4299

H. TIM HOFFMAN (SB# 49141)
ARTHUR W. LAZEAR (SB# 83603)
HOFFMAN & LAZEAR
180 Grand Avenue, Suite 1550
Oakland, CA 94612
Telephone: (510) 763-5700
Facsimile: (510) 835-1311

MARK R. THIERMAN (SB# 72913)
THIERMAN LAW FIRM
7287 Lakeside Drive, Suite 101
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF BOWMAN AND LAUROS REYES
aka LARRY REYES, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UBS FINANCIAL SERVICES, INC. and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. C-04-03525 MMC

**NOTICE OF PENDENCY OF CLASS
ACTION, PROPOSED SETTLEMENT
AND HEARING DATE FOR COURT
APPROVAL**

1 **TO: ALL CURRENT AND FORMER EMPLOYEES OF UBS**
2 **FINANCIAL SERVICES INC. ("UBS") WHO WERE EMPLOYED BY UBS**
3 **IN THE STATE OF CALIFORNIA AS FINANCIAL ADVISORS (JOB**
4 **CODE 456) AND/OR NEW FINANCIAL ADVISORS OR FINANCIAL**
5 **ADVISOR TRAINEES (JOB CODES 226 AND 457) DURING ALL OR**
6 **PART OF THE PERIOD FROM JUNE 30, 2000 THROUGH**
7 **[PRELIMINARY APPROVAL DATE].**

8 **PLEASE READ THIS NOTICE CAREFULLY.**

9 **IF YOU WISH TO RECEIVE YOUR SHARE OF THE**
10 **SETTLEMENT OF THIS CLASS ACTION, YOU NEED TO**
11 **COMPLETE AND POSTMARK YOUR CLAIM FORM NOT**
12 **LATER THAN [60 DAYS AFTER MAILING OF NOTICE].**

13 **IF YOU WISH TO COMMENT IN FAVOR OF THE**
14 **SETTLEMENT OR OBJECT TO THE SETTLEMENT, OR IF YOU**
15 **DECIDE NOT TO PARTICIPATE IN THE SETTLEMENT, YOU**
16 **MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.**

17 **IF YOU INTEND NOT TO PARTICIPATE IN THE SETTLEMENT,**
18 **YOU MUST COMPLETE AND POSTMARK YOUR EXCLUSION**
19 **FORM ON OR BEFORE [60 DAYS AFTER MAILING OF**
20 **NOTICE], OR ELSE YOU WILL BE BOUND BY THE**
21 **SETTLEMENT.**

22 Pursuant to the order of the United States District Court for the Northern District
23 of California entered on June 30, 2006, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

24 A proposed settlement (the "Settlement") has been reached between the parties in
25 this class action pending in United States District Court for the Northern District of California
26 brought on behalf of all individuals described above (the "Class"). The Court has preliminarily
27 approved the Settlement and conditionally certified the Class for purposes of the Settlement only.
28 You have received this notice because UBS records indicate that you are a member of the Class.
 This notice is designed to inform you of how you can make a claim under the Settlement,
 comment in favor of the Settlement or object to the Settlement, or elect not to participate in the
 Settlement. If you do not timely submit an Exclusion Form, and if the Settlement is finally
 approved by the Court, the Settlement will be binding upon you, even if you object to the
 Settlement. However, to receive your share of the proceeds to be paid under the Settlement, you

1 must submit a valid and timely Claim Form.

2
3 **I. BACKGROUND OF THE CASE**

4
5 On June 30, 2004, plaintiff Jeff Bowman commenced a purported class action
6 against UBS in Alameda County Superior Court ("Bowman action"). On October 13, 2004
7 plaintiff Lauros Reyes commenced a purported class action against UBS in Los Angeles County
8 Superior Court ("Reyes action"). On August 23, 2004 UBS filed its answer to the Bowman
9 action, and on January 3, 2005 UBS filed its answer to the Reyes action. On August 23, 2004
10 UBS removed the Bowman action to the United States District Court for the Northern District of
11 California and moved to consolidate the Bowman action and the Reyes action. On May 11, 2005
12 the Bowman action and the Reyes action were consolidated into the instant action.

13
14 In the action, plaintiffs allege that they and the Class were misclassified as exempt
15 from the overtime laws and not paid compensation for overtime hours they worked, and that they
16 were owed overtime compensation plus interest and penalties. They allege that they incurred
17 business-related expenses, that UBS did not reimburse them for those expenses and that UBS
18 unlawfully adjusted their compensation to account for those business expenses. They also allege
19 that they and the Class were not provided with meal periods.

20
21 UBS denies all of plaintiffs' material allegations. Specifically, UBS denies that
22 plaintiffs and the Class were misclassified as exempt, and denies that plaintiffs and the Class are
23 owed any compensation for overtime hours, interest, or penalties or for business-related expenses.
24 UBS further denies that it unlawfully adjusted the compensation of the Class to account for those
25 business expenses. UBS also denies that they were not provided with meal periods.

26
27 After good-faith negotiations presided over by a private mediator on July 11, 2005
28 and then after a full-day of good-faith negotiations on September 28, 2005 between Class Counsel

1 and counsel for UBS, in which both sides recognized the substantial risk of an adverse result in
2 the action for either side, plaintiffs and UBS agreed to settle the action pursuant to the terms and
3 conditions of the Settlement.

4
5 The Settlement represents a compromise and settlement of highly disputed claims.
6 Nothing in the Settlement is intended to or will be construed as an admission by UBS that
7 plaintiffs' claims in the action have merit or that it has any liability to plaintiffs or the Class on
8 those claims.

9
10 Plaintiffs and UBS, and their counsel, have concluded that the Settlement is
11 advantageous, considering the risks and uncertainties to each side of continued litigation. The
12 parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and
13 is in the best interests of the members of the Class.

14
15 As a member of the Class, you will participate in the Settlement and, if you submit
16 a valid and timely Claim Form, share in the proceeds to be paid under the Settlement unless you
17 elect not to participate by timely filing an Exclusion Form.

18
19 **II. SUMMARY OF THE SETTLEMENT**

20
21 The Settlement provides for the following:

22
23 **A. Who is included in the Settlement?**

24
25 You are included in the Settlement if you meet all of the conditions set forth in the
26 beginning of this notice. It is estimated that there are approximately 2,800 members of the Class.

1 **B. What will I receive from the Settlement?**

2
3 From a Settlement of up to \$44,000,000 less (i) Class Counsel's Fees and
4 Expenses, (ii) the Class Representatives' payment, and (iii) the Claims Administrator's fees and
5 costs (the "Class Member Distribution Amount"), UBS will make a settlement payment to each
6 Class Member who submits an approved claim based on the number of months the Class Member
7 worked as a Financial Advisor and/or Financial Advisor Trainee. For these purposes, months
8 worked are defined to include any month or portion of a month worked during the Covered
9 Period. The Covered Period is defined as the period from June 30, 2000 to the date on which the
10 District Court gave preliminary approval of the Settlement. The Settlement Payments will be
11 reduced by applicable tax deductions and withholdings.

12
13 In addition to the settlement amount discussed in the preceding paragraph, UBS
14 has agreed to cancel any agreements entered into by Class Members to repay losses or debts due
15 to trading errors or omissions.

16
17 **C. When will I receive my Settlement Payment?**

18
19 The Settlement Payments will be paid after final court approval of the Settlement
20 and after all rights to appeal or review are exhausted or any appeal or review has been resolved in
21 favor of the Settlement.

22
23 **D. What if I do not want to participate in the Settlement?**

24
25 You will not be included in the Settlement if you elect not to participate by
26 submitting an Exclusion Form that is provided with this notice and in accordance with the
27 conditions for submitting that form.

1 **E. What if I do not submit an Exclusion Form but also do not submit a Claim**
2 **Form?**

3
4 You still will be bound by the terms of the Settlement, but you will not receive a
5 Settlement Payment. To receive your share of the Settlement you must submit a valid and timely
6 Claim Form.

7
8 **F. Claims Administrator.**

9
10 The Court has appointed Rust Consulting Inc., 625 Marquette Avenue, Suite 880,
11 Minneapolis, MN 55402-2469, telephone: 612-359-2000, to act as an independent settlement
12 administrator and to resolve any dispute concerning a Class Member's eligibility to participate in
13 the Settlement and his or her share of the Settlement proceeds.

14
15 **G. Release of Claims.**

16
17 The Settlement includes a release by Class Members (other than those who file
18 Exclusion Forms) of UBS and its former and present officers, directors, employees, partners,
19 shareholders, and agents, and any other successors, assigns or legal representatives ("Class
20 Members' Released Parties"), from any and all wage-and-hour claims, rights, demands and
21 causes of action of every nature and description, whether known or unknown, arising during the
22 period from June 30, 2000 to the date on which the District Court gives final approval of the
23 Settlement ("Class Members' Released Period"), including without limitation statutory,
24 constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties,
25 liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, or
26 equitable relief, based on the following categories of allegations: (a) any and all claims for the
27 failure to pay any type of overtime wages; any and all claims for the failure to provide meal
28 and/or rest periods; and/or any and all claims stemming from or based on the alleged

1 misclassification of employees as exempt employees, *i.e.*, employees who are exempt under
2 federal and/or California law from the wage and hour requirements imposed on employees who
3 do not qualify for any exemption, including without limitation the executive, administrative, or
4 professional exemptions set forth in state and federal law; (b) any and all claims alleging the
5 improper assessment of costs, fines, penalties, chargebacks or settlements on employees,
6 including without limitation claims for improper trading error deductions; and (c) any and all
7 claims for failure to reimburse, indemnify or cover or pay for business costs, including without
8 limitation claims for reimbursement of costs spent on or imposed for any type of business
9 expense or support staff (Class Members' Released Claims). The Class Members' Released
10 Claims include claims meeting the above definition under any and all applicable statutes,
11 including without limitation the federal Fair Labor Standards Act, the Portal to Portal Act,
12 California Labor Code 96 through 98.2 et seq., the California Payment of Wages Law, and in
13 particular, California Labor Code § 200 et seq., including California Labor Code §§ 200 through
14 243 and §§ 203 and 218 and 218.5 in particular, California Labor Code § 300 et seq.; California
15 Labor Code § 400 et seq.; California Working Hours Law, California Labor Code § 500 et seq.,
16 California Labor Code § 1194; California Labor Code §§ 2802 and 2804; the California Unfair
17 Competition Act, and in particular, California Bus. & Prof Code § 17200 et seq., the California
18 Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698
19 through 2699, California Code of Civil Procedure § 1021.5, any other provision of the California
20 Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of
21 their iterations (including without limitation Wage Order 4 and the wage, overtime, meal and rest
22 period, record-keeping, and deduction provisions thereof).

23
24 The parties acknowledge that, during the Class Members' Released Period, certain
25 Class Members may have entered into agreements to repay losses due to trading errors and/or
26 omissions ("Repayment Agreements"). Except for those Class Members who file Exclusion
27 Forms, UBS hereby releases and discharges the Class Members, and each of their heirs,
28 representatives, successors, and assigns, from any and all claims, suits, debts, or demands based

1 upon or arising from such Repayment Agreements. Furthermore, UBS agrees that, upon entry of
2 the order granting preliminary approval, UBS will refrain from collecting on any such Repayment
3 Agreements unless and until the Settlement is either disapproved by the Court or revoked
4 pursuant to Paragraph 68 of the Joint Stipulation and Settlement Agreement.

5
6 **H. Class Representatives.**

7
8 In addition to their share as Participating Class Members, plaintiffs Jeff Bowman
9 and Lauros Reyes will each be paid \$20,000.00 for their services as Class Representatives, as
10 well as their willingness to accept the risk of paying UBS's attorneys' fees and costs in the event
11 of an unsuccessful outcome. This payment will be deducted from the Maximum Payment under
12 the Settlement.

13
14 **I. Attorneys' Fees.**

15
16 Class Counsel will seek approval from the Court for payment of attorneys' fees in
17 the amount of twenty-five percent (25%) of the total Settlement, or \$11,000,000.00, plus up to
18 \$100,000.00 in actual litigation costs incurred which, if approved by the Court, will be deducted
19 from the Maximum Payment under the Settlement. Class Counsel believe the amount for costs
20 and attorneys' fees requested is fair and reasonable, and UBS will not oppose their request for
21 that amount.

22
23 **J. Costs of Administration.**

24
25 The costs of administering the Settlement also will be deducted from the
26 Maximum Payment under the Settlement.

1 **III. PLAINTIFFS' AND CLASS COUNSEL'S SUPPORT OF THE SETTLEMENT.**

2

3 Plaintiffs as Class Representatives and Class Counsel support this settlement.

4 Their reasons include the inherent risk of denial of class certification, the risk of a trial on the

5 merits, and the inherent delays and uncertainties associated with litigation. Based on their

6 experience litigating similar cases, Class Counsel believe that further proceedings in this case,

7 including a trial and probable appeals, would be very expensive and protracted. No one can

8 confidently predict how the various legal questions at issue, including the amount of damages,

9 would ultimately be resolved. Therefore, upon careful consideration of all of the facts and

10 circumstances of this case, Class Counsel believe that the Settlement is fair, reasonable, and

11 adequate.

12

13 **IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

14

15 **A. Participating in the Settlement.**

16

17 Plaintiffs as Class Representatives and Class Counsel represent your interests as a

18 Class Member. Unless you elect not to participate in the Settlement by timely filing an Exclusion

19 Form, you are a part of the Class, you will be bound by the terms of the Settlement and any final

20 judgment that may be entered by the Court, and you will be deemed to have released the claims

21 against UBS and the other released parties described above. As a member of the Class, you will

22 not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses

23 unless you retain your own counsel, in which event you will be responsible for your own

24 attorneys' fees and costs.

B. Commenting in favor of the Settlement.

If you wish, you may comment in favor of the Settlement in writing and/or by appearing in person at the final approval hearing, which will be held on October 27, 2006. To do so, not later than [60 days after mailing of notice], you must submit a written notice of your comments and/or your intent to appear and comment in favor of the Settlement at the final approval hearing. Your notice should include your full name, address, date of birth, and dates of your employment at UBS. Send your notice to:

Office of the Clerk
United States District Court, Northern District of California
450 Golden Gate Avenue
16th Floor
San Francisco, California 94102

Also send copies of your notice to:

• **CLASS COUNSEL**

James F. Clapp
Dostart Clapp Gordon & Coveney, LLP
4370 La Jolla Village Drive, Suite 970
San Diego, CA 92122

• **DEFENDANT'S COUNSEL**

M. Kirby C. Wilcox
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105

**DO NOT TELEPHONE THE COURT, DEFENDANT'S COUNSEL, OR
UBS.**

1 **C. Objecting to the Settlement.**

2

3 You may object to the terms of the Settlement before final approval, either by

4 filing a written objection or filing a notice of your intent to appear and object at the final approval

5 hearing. However, if the Court rejects your objection, you will still be bound by the terms of the

6 Settlement, unless you also submit an Exclusion Form. To object, you must send a written notice

7 of objection or a written notice of your intent to appear and object at the final approval hearing to

8 the court and to counsel at the same addresses shown above. **DO NOT TELEPHONE THE**

9 **COURT, DEFENDANT'S COUNSEL OR UBS.** Any written objection and/or notice of your

10 intent to appear at the hearing must state each specific reason in support of your objection and any

11 legal support for each objection. Your written objection and/or notice of your intent to appear at

12 the hearing must also state your full name, address, date of birth, and the dates of your

13 employment at UBS. To be valid and effective, the Court and Counsel must receive any written

14 objections and/or notices of intent to appear at the hearing not later than [60 days after mailing of

15 notice]. A Class Member who fails to file and serve a written statement of objection in the

16 manner described above and by the specified deadline will be deemed to have waived any

17 objections and will be foreclosed from making any objection (whether by appeal or otherwise) to

18 the Settlement.

19

20 **D. Excluding Yourself from the Settlement.**

21

22 If you do not wish to participate in the Settlement, you must complete the enclosed

23 Exclusion Form. To be valid, the Exclusion Form must be completed, signed by you under

24 penalty of perjury, accompanied by a photocopy of your driver's license or other form of

25 government issued picture identification (*e.g.*, passport), and returned to:

26

27 UBS Financial Services Inc. Claims Administrator

28 Rust Consulting Inc.

 625 Marquette Avenue, Suite 880

1 Minneapolis, MN 55402-2469

2
3 The Exclusion Form must be postmarked not later than [60 days after mailing of
4 notice]. If the Exclusion Form is sent from within the United States it must be sent through the
5 United States Postal Service via registered or certified mail, with return receipt requested. A
6 Class Member who fails to mail an Exclusion Form in the manner and by the deadline specified
7 above will be bound by all terms and conditions of the Settlement, if the Settlement is approved
8 by the Court, and the Judgment, regardless of whether he or she has objected to the Settlement.
9

10 Any person who files a complete and timely Exclusion Form will, upon receipt, no
11 longer be a member of the Settlement Class, will be barred from participating in any portion of
12 the Settlement, and will receive no benefits from the Settlement. Any such person, at his or her
13 own expense, may pursue any claims he or she may have against UBS, its affiliates, predecessor,
14 or acquired companies.
15

16 **E. Claiming a Share of the Settlement Proceeds.**

17
18 To receive a share of the Settlement proceeds, you must sign the enclosed Claim
19 Form and return it to:
20

21 UBS Financial Services Inc. Claims Administrator
22 Rust Consulting Inc.
23 625 Marquette Avenue, Suite 880
24 Minneapolis, MN 55402-2469

25 To be valid, the Claim Form must be completed in full, signed by you under
26 penalty of perjury, accompanied by a photocopy of your driver's license or other form of
27 government issued picture identification (*e.g.*, passport). The Claim Form must be postmarked
28 not later than [60 days after mailing of notice]. A Class Member who fails to mail a Claim Form

1 in the manner and by the deadline specified above will not receive a share of the Settlement
2 proceeds. If that Class Member also fails to file a valid and timely Exclusion Form, the Class
3 Member is bound by all terms and conditions of the Settlement, if the Settlement is approved by
4 the Court, and the Judgment, even though the Class Member did not receive a share of the
5 Settlement Proceeds.

6
7 **V. FINAL SETTLEMENT APPROVAL HEARING**

8
9 The Court will hold a final approval hearing in Courtroom 7, 19th Floor of the
10 United States District Court, 450 Golden Gate Avenue, 19th Floor, San Francisco, California
11 94102, on October 27, 2006, at 9:00 a.m., to determine whether the settlement should be finally
12 approved as fair, reasonable, and adequate. The Court will also be asked to approve Class
13 Counsel's request for costs and attorneys' fees and the special payment made to plaintiffs as the
14 Class Representatives. Class Counsel are seeking approval of a total of not more than
15 \$11,100,000.00 in costs and attorneys' fees incurred or to be incurred.

16
17 The hearing may be postponed without further notice to the Class. It is not
18 necessary for you to appear at this hearing. If you have given notice of your comments in favor
19 of the settlement, or your objection to the settlement, you may appear at the hearing at your
20 option so long as you have filed a notice of intent to appear by [60 days after mailing of notice].

21
22 **VI. GETTING MORE INFORMATION**

23
24 The above is a summary of the basic terms of the Settlement. For the precise
25 terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of
26 Settlement and Release Between Plaintiffs and Defendant, which will be on file with the Clerk of
27 the Court. The pleadings and other records in this litigation including the Settlement Agreement,
28 may be examined at any time during regular business hours in the United States District Court,

1 450 Golden Gate Avenue, 19th Floor, San Francisco, California, or you may contact Class
2 Counsel or the Claims Administrator. **PLEASE DO NOT TELEPHONE THE COURT,**
3 **DEFENDANT'S COUNSEL OR UBS FOR INFORMATION REGARDING THIS**
4 **SETTLEMENT OR THE CLAIM PROCESS!**

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF BOWMAN AND LAUROS REYES
aka LARRY REYES , individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UBS FINANCIAL SERVICES INC., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. C-04-03525 MMC

CLAIM FORM

IF YOU WANT TO RECEIVE YOUR SHARE OF THIS CLASS ACTION SETTLEMENT, COMPLETE THIS FORM IN ITS ENTIRETY, SIGN THE FORM UNDER PENALTY OF PERJURY, ENCLOSE A PHOTOCOPY OF YOUR DRIVER'S LICENSE OR OTHER FORM OF GOVERNMENT ISSUED PICTURE IDENTIFICATION (E.G., PASSPORT), AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER THAN [60 DAYS AFTER MAILING OF NOTICE].

UBS Financial Services Inc. Claims Administrator
Rust Consulting Inc.
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402-2469

I declare as follows:

I received notice of the proposed settlement in this action and I wish to receive my share of the proposed settlement.

(1) During all or part of the period from June 30, 2000, through the date I submit this form, I was employed by UBS Financial Services Inc. ("UBS"), in the State of California as a Financial Advisor and/or New Financial Advisor or Financial Advisor Trainee for the following work months (check only one):

☐ I agree with UBS's records that I worked a total of _____ months as a Financial Advisor and/or New Financial Advisor or Financial Advisor Trainee during the

1 time period June 30, 2000 through [the date of preliminary approval].
 2 ☐ I disagree with UBS's records and instead contend that I worked a total of _____
 3 months as a Financial Advisor and/or New Financial Advisor or Financial Advisor
 4 Trainee during the time period June 30, 2000 through [the date of preliminary
 5 approval].
 6

7 (2) While employed by UBS as a Financial Advisor and/or New Financial Advisor or
 8 Financial Advisor Trainee during the time period June 30, 2000 through the date I submit this
 9 response, I worked in excess of 8 hours per day (not including meal periods) or in excess of 40
 10 hours per week (not including meal periods).
 11

12 (3) While employed by UBS as a Financial Advisor and/or New Financial Advisor or
 13 Financial Advisor Trainee during the time period June 30, 2000 through the date I submit this
 14 response, I incurred business-related expenses for which I did not receive reimbursement.
 15

16 Executed on _____, 2006, at _____.

17 I declare under penalty of perjury that the foregoing and the information provided below
 18 is true and correct.
 19

20 _____
 (Signature)
 21 _____
 (Typed or Printed Name)
 22 _____
 (Address)
 23 _____
 (City, State, Zip Code)
 24 _____
 (Telephone Number, Including Area Code)
 25 _____
 (Social Security Number)
 26
 27
 28

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF BOWMAN AND LAUROS REYES
aka LARRY REYES , individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UBS FINANCIAL SERVICES INC., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. C-04-03525 MMC

EXCLUSION FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT,
COMPLETE THIS FORM IN ITS ENTIRETY, SIGN THE FORM
UNDER PENALTY OF PERJURY, ENCLOSE A PHOTOCOPY OF
YOUR DRIVER'S LICENSE OR OTHER FORM OF GOVERNMENT
ISSUED PICTURE IDENTIFICATION (E.G., PASSPORT) AND MAIL IT
TO THE ADDRESS BELOW, POSTMARKED NOT LATER THAN [60
DAYS AFTER MAILING OF NOTICE].**

UBS Financial Services Inc. Claims Administrator
Rust Consulting Inc.
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402-2469

I declare as follows:

I was employed by UBS Financial Services Inc. ("UBS"), in the State of California as a Financial Advisor and/or New Financial Advisor or Financial Advisor Trainee during all or part of the period from June 30, 2000, through the date I submit this response. I received notice of the proposed settlement in this action, and I wish to be excluded from the class and *not* to participate in the proposed settlement.

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Dated: _____, 2006. _____
(Signature)

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Social Security Number)

EXHIBIT B

UBS/Bowman - Opt-Outs

RustID	OP Number	Received Date	Postmark Date	Signed	Signed Date	Printed Name	Source Months	First Name	Last Name	City	State
00000994	OP000002	8/1/2006	7/28/2006	Y	7/28/2006	STEPHEN A MANELSKI	58	STEPHEN A.	MANELSKI	CLOVIS	CA
000009102	OP000003	8/1/2006	7/29/2006	Y	7/27/2006	JAMES J SHEA	72	JAMES JOSEPH	SHEA	SAN DIEGO	CA
00002530	OP000004	8/3/2006	7/31/2006	Y	7/28/2006	MAURICE H LAUMAILLET	9	MAURICE H.	LAUMAILLET	NORTHBRIDGE	CA
00018685	OP000005	8/3/2006	7/29/2006	Y	7/27/2006	JOANNA HSIEH	5	JOANNA	HSEIH	TUSTIN	CA
00023979	OP000006	8/7/2006	8/3/2006	Y	8/2/2006	STUART C POYTRESS	10	STUART C.	POYTRESS	CLOVIS	CA
00012294	OP000007	8/7/2006	8/3/2006	Y	8/3/2006	KENNETH COBURN	25	KENNETH	COBURN	LIVERMORE	CA
00028295	OP000008	8/9/2006	8/7/2006	Y	8/7/2006	CONNIE CHENG	72	CONNIE HONG	CHENG	SAN DIEGO	CA
00001793	OP000009	8/10/2006	8/7/2006	Y	8/5/2006	KIER DE LEO	1	KIER DAVID	DE LEO	LONG BEACH	CA
00017763	OP000010	8/11/2006	8/8/2006	Y	8/3/2006	MARTY SMITH (TO EXECUTOF	34	MARK P	SMITH	MENLO PARK	CA
00016919	OP000011	8/14/2006	8/9/2006	Y	7/31/2006	NATALIE C DEANDA	11	NATALIE	DE ANDA	LOS ANGELES	CA
00017893	OP000012	8/18/2006	8/15/2006	Y	8/14/2006	V. OFNER FOR S. OFNER	22	SHELLEY ANN	OFNER	OCEANSIDE	CA
00023382	OP000013	8/25/2006	8/22/2006	Y	7/29/2006	COREY QUINN	5	COREY K	QUINN	LOS ANGELES	CA
00009072	OP000014	8/25/2006	8/22/2006	Y	7/30/2006	LIZBETH BERG	1	LIZBETH	SHAVAR-BERG	QUARTZ HILL	CA
00000901	OP000015	8/29/2006	8/26/2006	Y	8/7/2006	GEORGI ELLEN PIRONE	6	GEORGI ELLEN	PIRONE	MILL VALLEY	CA
00022200	OP000016	8/31/2006	8/28/2006	Y	8/4/2006	DAVID WAISBEIN	67	DAVID	WAISBEIN	FOSTER CITY	CA
00014984	OP000017	9/1/2006	9/6/2006	Y	8/23/2006	FRANKLIN F MOULTON	68	FRANKLIN F.	MOULTON	LOS ANGELES	CA
00002615	OP000019	9/14/2006	9/11/2006	Y	9/11/2006	TODD KNAPP	4	TODD	KNAPP	SALINAS	CA
00003865	OP000020	9/18/2006	9/13/2006	Y	8/14/2006	GARY GRAY	13	GARY EDWIN	GRAY	SAN DIEGO	CA
00006996	OP000021	9/18/2006	9/14/2006	Y	9/13/2006	M KENNETH POWELL JR.	72	M KENNETH	PENWELL JR.	PIEDMONT	CA
00024471	OP000022	9/21/2006	9/18/2006	Y	9/18/2006	MICHAEL FRANKFURTER	13	MICHAEL	FRANKFURTER	OAK PARK	CA
00011716	OP000023	9/22/2006	9/22/2006	Y	9/20/2006	ANGELI A FORSTER	41	ANGELI	FORSTER	SAN DIEGO	CA
00004077	OP000024	9/22/2006	9/18/2006	Y	9/18/2006	ROBERT L BAUMANN	8	ROBERT	BAUMAN	CULVER CITY	CA
00007375	OP000025	9/26/2006	9/18/2006	Y	9/19/2006	SYLVIA SZABO-LARSON	39	SYLVIA K.	SZABO-LARSON	DOVE CANYON	CA

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105-3441. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On November 21, 2006, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

[PROPOSED] ORDER GRANTING PLAINTIFFS' AND
DEFENDANT'S MOTIONS FOR FINAL APPROVAL OF
SETTLEMENT AND AWARDING ATTORNEY'S FEES,
LITIGATION EXPENSES AND ENHANCEMENT PAYMENTS

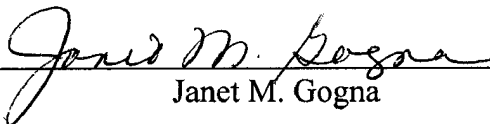
in a sealed envelope, postage fully paid, addressed as follows:

Steven L. Miller
City National Bank Building
16133 Ventura Boulevard, Suite 1200
Encino, CA 91436

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 21, 2006, at San Francisco, California.


Janet M. Gogna